

Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

January 4, 2007

Dear Xxxxx:

This letter is in response to your letter dated August 21, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I work as a self-employed, Marketing Consultant with clients in various states around the country. Recently, some questions have come up regarding Occupation and Use Taxes or Sales Taxes that I have not been able to find direct answers for in internet searches. I would appreciate your help in getting answers to these specific questions including the law or statute that defines the regulations governing these services.

1. There are times when I recommend that a client purchase certain items for use in marketing their products. These items are most commonly pens, notebooks, briefcases, etc. with their company logo affixed. Since I have a local Illinois supplier there are times when the client asks me to handle the order for them. In these cases, although I coordinate the order, the merchandise is paid for by the out-of-state client, is shipped directly to them and is used outside of the state of Illinois. It has been my understanding that this can be handled like a mail order under interstate commerce where no IL sales tax should be assessed by my supplier. Is this correct?
2. There are also times when I handle Graphic Arts or Printing jobs for these same out-of-state clients. I also have an Illinois printer that I use to complete these orders. In these cases I bill the client and pay the printer because I add a

personal consulting fee to these orders. However, in this case also, the printed materials are sent directly to the out-of-state client to be used outside of Illinois. It is my understanding that even though I pay for the printing services the fact that the merchandise is shipped and used outside of Illinois allows it to be sold to my client without assessing a sales tax. Is this correct?

3. For one of my clients in Texas I have suggested that they set-up a merchandise page on their Website. The supplier for the logoed merchandise will be here in Illinois and the merchandise will be ordered via a toll-free number. Again, it is my assumption that only those orders that are shipped to customers in Illinois will be assessed a sales tax. All other orders should be handled as mail orders under interstate commerce with no IL sales tax assessed. Is this correct?

In doing research on the internet to try to answer these questions I found a reference to an Illinois Statute that would allow me to become a holding agent with a legal registration number that would allow me to purchase these services/products in IL for my out-of-state clients without paying an IL sales tax on those items as long as the items were sent for use outside of IL. If this registration is necessary for me to continue to purchase these products/services for my clients without IL sales tax would you please send me the appropriate application with instructions on how to file and maintain records for this registration.

Thank you for your help in this matter.

DEPARTMENT'S RESPONSE

Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to the purchaser or his agent, the gross receipts from the sale are subject to tax if the sale is at retail.

Transactions as described in 86 Ill. Adm. Code 130.605(b) and 130.605(c) are not subject to tax. The tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that delivery is actually made. See 86 Ill. Adm. Code 130.605(b).

Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply. See 86 Ill. Adm. Code 130.605(c).

However, sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois, 86 Ill. Adm. Code 130.305(a)(1) and (2). This would be the case if the purchaser arranges and pays for the shipping, and the carrier takes possession of the property in this State.

We are not familiar with registration numbers for holding agents. However, you may be interested in knowing about sales for resale. Retailers in Illinois are required to either charge tax or document exemptions when they make deliveries in Illinois or the merchandise is picked up by the purchaser in Illinois. In order to document the fact that their sales to purchasers are sales for resale, retailers are obligated by Illinois to obtain valid Certificates of Resale from their purchasers. See the enclosed copy of 86 Ill. Adm. Code 130.1405.

Certificates of Resale must contain the following items of information.

1. a statement from the purchaser that items are being purchased for resale;
2. seller's name and address;
3. purchaser's name and address;
4. a description of the items being purchased for resale;
5. purchaser's signature and date of signing;
6. purchaser's registration number with the Illinois Department of Revenue; purchaser's resale number issued by the Illinois Department of Revenue; or, a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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